1	IN THE UNITED STATES DISTRICT COURT
2	FOR THE NORTHERN DISTRICT OF CALIFORNIA
3	VISTAN CORPORATION, )
4	Plaintiff, ) CIVIL ACTION
5	-v- ) NO. 10-4862 JCS
6	FADEI USA, INC., PAN AMERICAN ) ENGINEERING and EQUIPMENT CO., )
7	INC., MANUEL SILVA, and MARIANI ) PACKING CO., INC., )
8	Defendants. ) )
9	FADEI USA, INC., PAN AMERICAN ) ENGINEERING and EQUIPMENT CO., )
10	INC., MANUEL SILVA, and MARIANI ) PACKING CO., INC., )
11	Counterclaimants, )
12	-v- )
13	VISTAN CORPORATION, ) Counterdefendant. )
14	
15	[PROPOSED] ORDER REGARDING EXPERT TESTIMONY AND EXTRINSIC
16	EVIDENCE AT CLAIM CONSTRUCTION HEARING
17	The Court, in accordance with the parties' stipulation, Orders as follows:
18	1. <u>Plaintiff's Extrinsic Evidence and Defendants' Reservation</u> . Plaintiff's proffered
19	extrinsic evidence for the claim construction hearing will be limited to i) the dictionary
20	definitions cited in their Preliminary Claim Constructions, which are attached to the Joint
21	Prehearing Statement as Exhibit B, the substance of which is repeated at Exhibit D-1; and ii)
22	expert opinion in the form of declarations only, from any of Plaintiffs' witnesses designated in
23	Section VII.1 to the Joint Prehearing Statement (Mr. Silberman, Mr. Davis, and Mr. Jones), and
24	only with regard to the construction of the term "active assembly." Defendants reserve the right
25	challenge the admission of Plaintiff's extrinsic evidence at the time of the claim construction
26	hearing, or by whatever other deadline such challenges are due.
27	2. <u>Defendants' Extrinsic Evidence and Plaintiff's Reservation</u> . Defendants' proffere
28	extrinsic evidence for the claim construction hearing will be solely limited to i) expert opinion

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testimony in the form of declarations only, from the two expert witnesses designated in Section
VII.2 of the Joint Prehearing Statement (Dr. Velinsky and Dr. Klopp). and only with regard to the
construction of the term "active assembly;" and ii) the photographs and video identified in section
VII.2.f of the Joint Prehearing Statement (together with any demonstratives as noted). Plaintiff
reserves the right challenge the admission of Defendants' extrinsic evidence at the time of the
claim construction hearing, or by whatever other deadline such challenges are due.

- 3. <u>Deposition of Designated Experts</u>. There shall be no depositions of the witnesses disclosed in the Joint Prehearing Statement with regard to claim constructions issues; provided, however, that the Parties reserve the right to depose any such witnesses for purposes other than claim construction in such witnesses' capacity as a percipient witness or, to the extent ultimately designated as testifying experts pursuant to FRCP 26, an expert witness.
- 4. <u>No Admission of Relevance</u>. The Parties' agreement herein shall not be considered an admission or concession by any Party as to the relevance or need for the Court to consider the proffered extrinsic evidence.

Dated: 10/25/11

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